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IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND RULE 3.2,)	No. R-20-0004
RULE 4.1, AND RULE 41, FORMS 2(a))	
AND 2(b), ARIZONA RULES OF)	REPLY
CRIMINAL PROCEDURE)	
_____)	

This rule petition requested amendments to Rule 3.2 (“Content of a Warrant or Summons”), Rule 4.1 (“Procedure Upon Arrest”), and Rule 41, Forms 2(a) (“Arrest Warrant: Superior Court”) and 2(b) (“Arrest Warrant: Limited Jurisdiction Courts”) of the Arizona Rules of Criminal Procedure.

This Reply will respond to three comments to the petition that were submitted on the Court Rules Forum. This Reply will also discuss Petitioner’s informal dialogue with court stakeholders concerning other proposed modifications to the arrest warrant forms. Some, but not all, of these stakeholders’ proposed modifications were incorporated in the forms, as discussed in section (5) of this Reply. An Appendix to this Reply shows the final revised versions of the rules and

forms. Please note that the revised forms in the Appendix have no redlines because the architecture of the forms is not well-suited for showing them. However, changes to the forms are highlighted in yellow and are discussed in the narrative of this Reply.¹

(1) Introduction. Petitioner convened an Arrest Warrant Workgroup shortly before the June 2019 Judicial Conference. The workgroup was led by Jerry Landau, the Government Affairs Director of the Administrative Office of the Courts (“AOC”). Workgroup members included judicial officers from general and limited jurisdiction courts in four counties (Coconino, Maricopa, Mohave, and Pima), as well as AOC attorneys and specialists.

Establishment of the workgroup was prompted by memos prepared by the Maricopa County Attorney’s Office (“MCAO”) and the Pinal County Attorney’s Office (“PCAO”), which posed this issue:

If a defendant is arrested pursuant to a warrant and the warrant includes a predetermined bond amount, may the defendant be released upon posting the bond and without appearing before a magistrate for a Rule 4.2 initial appearance?

After discussing pertinent legal authority, the MCAO concluded, and advised the Maricopa County Sheriff, that all arrested defendants, even those who post a pre-set bond, should be seen by the initial appearance magistrate, who could then

¹ Petitioner filed a Notice of Errata on February 25, 2020. The changes in the Appendix to this Reply show modifications to the “Corrected Appendix” that Petitioner filed with the Notice of Errata.

determine the totality of the arrested defendant's release conditions. The PCAO reached a similar conclusion. But some courts, particularly limited jurisdiction courts, took a different view. Those courts believed that when a magistrate sets a bond amount in a warrant, the magistrate has expressed the objective of promptly releasing the defendant when that bond amount is posted, particularly when the underlying offense is a misdemeanor.

Following a discussion of statutory, rule, and case authorities, the workgroup concluded that the Criminal Rules should:

- (1) distinguish warrants concerning felonies from warrants concerning misdemeanors;
- (2) permit a defendant arrested on a misdemeanor warrant—at the issuing magistrate's discretion—to post a bond without the need to see an initial appearance magistrate; and
- (3) require a defendant who is arrested on a felony warrant to see a magistrate before being released, even if the warrant contains a bond amount and the defendant can immediately post that bond.

Moreover, the workgroup proposed that a magistrate issuing a felony warrant should have the ability to “recommend” the bond type and amount. The workgroup believed that the magistrate who issued the felony warrant might have meaningful information concerning an individual defendant's circumstances and could knowledgably propose the type and amount of the defendant's bond. However, the bond would be “recommended” because the initial appearance magistrate, who

would personally see the defendant following the arrest, would likely have more information, such as a risk assessment of the defendant, than the issuing magistrate. (See further the discussion of risk assessments at page 8.) A magistrate conducting an initial appearance, particularly one that occurred a significant time after the felony warrant was issued, would accordingly be able to make an independent bond determination based on circumstances that existed at the time of arrest.

(2) Summary of the proposed rule changes. Felonies are more serious crimes, and felony offenders generally—although admittedly, not always—pose a more elevated public safety risk than misdemeanants. Accordingly, the lynchpin of the workgroup’s recommendations is a differentiation between felony and misdemeanor warrants. This petition proposed that a defendant arrested on a felony warrant would be required to have an initial appearance prior to release. By comparison, a defendant arrested on a misdemeanor warrant could be released upon posting the bond and without the necessity of an initial appearance.

The rule petition detailed the proposed changes to Rule 3.2 (“Content of a Warrant Summons”) and Rule 4.1 (“Procedure Upon Arrest”) that would implement these changes. Among other changes, in Rule 3.2(a) (“warrant”), some of the current text would be deleted and be replaced by two new subparts, one with the title, “bond for felony warrants,” and the other titled “bond for misdemeanor warrants.”

The new subpart for a felony warrant would allow the issuing magistrate, if the defendant is eligible for release, to include on the warrant “a recommended deposit, cash, unsecured, or secured appearance bond and a recommended bond amount.” The new subpart would then say, “However, when the warrant is issued for a felony offense, the defendant must not be released on bond without having an initial appearance before a magistrate.” Therefore, a defendant who is arrested on a felony warrant would be required to have an initial appearance following arrest, even if the defendant is able to post bond before that appearance.

The new Rule 3.2 subpart on misdemeanor warrants would similarly allow the warrant to “state the amount of a deposit, cash, unsecured, or secured appearance bond.” However, the bond amount is not qualified as “recommended” because the proposed amendments to Rule 4.1 would permit a defendant arrested on a misdemeanor warrant to obtain an immediate release by posting a bond in that amount. A new sentence in proposed Rule 4.1(a) says,

If a misdemeanor warrant states the amount of a deposit, cash, unsecured, or secured appearance bond, as provided in Rule 3.2(a)(2), and the arrested person has posted the bond prior to the initial appearance, the arrested person must be promptly released from custody.

Therefore, and unlike a defendant arrested on a felony warrant, these amendments would permit the release from custody of an arrested misdemeanant as soon as the bond is posted and without the necessity of an initial appearance.

(3) Summary of changes to Rule 41, Forms 2(a) (currently titled “Arrest Warrant: Superior Court”) and 2(b) (currently titled “Arrest Warrant: Limited Jurisdiction Courts”). Petitioner also proposed modifications to the two warrants forms to conform them to the foregoing rule amendments. These modifications include changes to the current titles of Forms 2(a) and 2(b). Either the superior court or a limited jurisdiction court has the authority to issue, and in practice do issue, warrants for felonies and misdemeanors. The workgroup concluded that the critical distinction concerning these warrant forms is not the level of the court (superior or limited jurisdiction) issuing the warrant, as the current forms specify, but rather, whether the court is issuing the warrant for a felony or a misdemeanor. Accordingly, Petitioner proposed changing the title of Form 2(a) to “Felony Arrest Warrant,” and the title of Form 2(b) to “Misdemeanor Arrest Warrant.” The proposed forms include revised content that flows from this distinction.

(4) Rules Forum comments.

(a) APAAC. The Arizona Prosecuting Attorneys Advisory Council (“APAAC”) comment analyzed this rule petition and concluded by saying,

The Arizona Prosecuting Attorneys’ Advisory Council commends the Workgroup in addressing an ambiguity in the criminal rules involving arrest warrants and in proposing a solution that both clarifies and simplifies the process when a person is arrested with a set bond amount. Accordingly, APAAC supports the proposal in this petition. [APAAC comment at pages 3-4.]

(b) State Bar of Arizona and the Arizona Attorneys for Criminal Justice

(“AACJ”). The State Bar’s comment opposes the petition. Its comment concluded,

The rules regarding release presume a certain order of events, arrest or summons, initial appearance, release conditions and perhaps a bond set, then payment of a bond. But they do not preclude the payment of a bond and release once the bond is paid, and they shouldn’t. [State Bar comment at page 5.]

Petitioner agrees with the first sentence of this comment, including the observation that an initial appearance precedes the setting of release conditions. For that reason, Petitioner disagrees with the second sentence. As the MCAO and PCAO memos both observed, Rule 4.1(c) (“on arrest with a warrant”) instructs that an arrested person must be taken before a magistrate. Rule 4.2 (“initial appearance”) section (a) (“generally”), subpart (7) requires the magistrate at the initial appearance to determine the conditions of release under Rule 7.2(a). Rule 7.2 (“right to release”), section (a) (“before conviction”) indicates that a judicial officer will determine whether to order an own recognizance release with mandatory conditions, or whether other conditions are necessary. Statutes also provide that a person arrested on a warrant must appear before a magistrate, who will determine bail.²

² See, e.g., A.R.S. § 13-3964: “If the person arrested is bailable as of right in respect of the offense set forth in the warrant, the officer making the arrest shall, upon being so required by the person arrested, take him before a magistrate or other official, having authority to admit to bail for such offense, of the county in which the arrest is made, who shall admit him to bail for his appearance before the magistrate named or otherwise designated in the warrant or, if he is absent or unable to act, before the nearest or most accessible magistrate in such county.” See further A.R.S. § 13-3967: “At his appearance before a judicial officer,

Petitioner also notes Section 5-201 (“Evidence Based Pretrial Services”) of the Arizona Code of Judicial Administration. Subpart (E)(1) provides,

Courts operating pretrial services shall use a pretrial risk assessment tool approved by the Arizona Judicial Council to assist in determining a defendant's likelihood of committing a new crime or failing to appear for court while on pretrial release. The results of the pretrial risk assessment tool shall be provided to the court prior to the initial appearance....

The AACJ observes at page 3 of its comment that “a magistrate has already reviewed the case and presumably heard arguments from the prosecution before assessing bond in accordance with Rule 7.2.” Although this may be true occasionally, a prosecutor won’t always supply input. Even when the prosecutor’s input is available, it might not include the range of information that the pretrial services report would address. See A.C.J.A. § 5-201(E)(2), which identifies twelve pertinent matters for inclusion in the pretrial risk assessment (among them, the accused’s family ties, employment, financial resources, character, mental condition, and substance abuse issues) that might not be within the knowledge of either the magistrate or the prosecutor when the felony warrant is issued.

The AACJ also notes at page 3 of its comment its concerns about the length of time between issuance of the warrant and the subsequent arrest. However, this

any person who is charged with a public offense that is bailable as a matter of right shall be ordered released pending trial on his own recognizance or on the execution of bail in an amount specified by the judicial officer.”

passage of time further supports a review of the bond amount by an initial appearance magistrate because the defendant's circumstances might have changed.

It is permissible to detain a defendant arrested on a felony warrant for a limited number of hours, until the defendant can be seen by a magistrate. *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991) held that “that a jurisdiction that provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein* [*Gerstein v. Pugh*, 420 U.S. 103 (1975)].” (Emphasis added.) Under Rule 4.2(a) of the Arizona Rules of Criminal Procedure, a defendant must have a “prompt” appearance before a magistrate, which under the rule means within 24 hours after the arrest; if the defendant does not have an initial appearance within that window of time, the defendant must be released. This standard is higher than what is required by *County of Riverside*. Under Petitioner's proposed amendments, the defendant's initial appearance would occur “promptly” after the arrest, i.e., within 24 hours, and therefore meet legal requirements.

In many instances, an initial appearance after an arrest on a warrant will be the defendant's first contact with a judicial officer. The proposed mandatory appearance of a felony defendant is justified by public safety considerations and the benefit of having a magistrate knowingly determine the felony defendant's release conditions at an initial appearance. An accused felon who fails to appear for a

scheduled court hearing is, in fact, “fleeing” in the sense that the person is not appearing in court as ordered. The magistrate who issues the warrant in that circumstance might have little or no knowledge about the individual because the individual didn’t appear. The purpose of issuing that warrant is to bring the person before the court. If the magistrate who issues the warrant sets a specific bond amount without having this knowledge, and an accused felon, such as a drug dealer or armed robber, has access to money, the felon can simply pay the bond and once again flee. A magistrate would then need to issue a new warrant and set a bond, just perpetuating the cycle.

Law enforcement officers who serve warrants perform a dangerous duty. It makes no sense to have law enforcement officers risk their lives to serve a warrant and bring a fleeing felon to jail, and then have the jail immediately release the person simply because the person has access to money and can post a bond that was set sometime in the past. A requirement that an accused felon arrested on a warrant must appear for an initial appearance provides an opportunity for making a risk assessment and allows the judicial officer to make an informed decision that considers the totality of the circumstances.

Petitioner’s proposed rule changes would carve out a significant exception to the current rule requirements by allowing the release of a defendant arrested on a misdemeanor warrant upon the posting of bail and before seeing a magistrate at an

initial appearance. This was previously an unwritten practice, and adoption of the proposed amendments would codify that practice.

(5) Informal Comments. The Committee on Limited Jurisdiction Courts (“LJC”) considered this petition on February 26, 2020. Although it did not file a formal comment, the LJC was generally supportive of the petition, but with the following caveat. A judge member of the LJC who was participating in the Supreme Court’s electronic warrant pilot project requested two changes to Form 2(b) (the misdemeanor warrant) to conform to an arrest warrant form developed by pilot program participants. One of the requested changes was to add a domestic violence indicator in the caption section of the warrant. The basis of the request was that inserting this indicator would alert law enforcement officers who are serving those warrants of the potential for volatility or danger inherent in domestic violence situations. The other requested change concerned a modification in the caption to the name and location of the issuing court. Petitioner had no objection to these changes, modified the forms accordingly, and then submitted the revised forms to the judge member who had requested the changes to assure that the changes were correctly made.

Thereafter, the judge member, the judge member’s staff, a representative of the AOC’s electronic warrant project, Mr. Landau, and warrant workgroup staff, had a series of conversations concerning additional requested changes to Forms 2(a) and

2(b). Some of these changes have been incorporated in the revised forms shown in the Appendix to this Reply. Those changes include the addition of a third box, or panel, at the top of the form; rearrangement of the information displayed in those panels; and the addition of fields, such as vehicle information, below the judge's signature line that would assist law enforcement in identifying the named defendant.

However, other requested changes were declined. The most notable of these requests would have changed the form titles back to superior court warrant and limited jurisdiction court warrant. Doing so would have been contrary to the workgroup's conclusion that the warrant forms' most essential distinction should be between felonies and misdemeanors, and would have necessitated significant revisions to the text of both forms. It also might have necessitated four forms rather than two: a superior court felony warrant, a superior court misdemeanor warrant, a limited jurisdiction felony warrant, and a limited jurisdiction misdemeanor warrant. That request would have taken the project back to its starting point at a time when the project was nearing completion.

(6) Conclusion. Petitioner accordingly requests that the Court adopt the proposed amendments to Rules 3.2 and 4.1, as shown in the Appendix to this Reply. Petitioner also requests that current Rule 41, Forms 2(a) and 2(b), be abrogated, and

that the Court adopt as replacements Forms 2(a) and 2(b) in the Appendix.

RESPECTFULLY SUBMITTED this 28th day of May 2020.

David K. Byers, Administrative Director
Administrative Office of the Courts

Appendix to the Reply

In the proposed amendments to the Rules of Criminal Procedure, Rules 3.2(a) and 4.1(a), deletions are shown by ~~strikethrough~~, and additions are shown by underline. A clean version follows the markup version. Proposed Rule 41, Forms 2(a) and 2(b), appear after the proposed rules. Changes to the Corrected Appendix, which was filed with the Notice of Errata, are shown with **yellow highlight**.

Rule 3.2. Content of a Warrant or Summons

(a) Warrant.

(1) Mandatory Provisions. A warrant must:

(1A) be signed **with an electronic or other signature** by the issuing magistrate **or by a deputy clerk of the superior court;**

(2B) contain the defendant's name or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty;

(3C) state the charged offense and whether the offense is one to which victims' rights provisions apply; and

(4D) command that the defendant be arrested and brought before the issuing magistrate or, if the issuing magistrate is absent or unable to act, the nearest or most accessible magistrate in the same county or in the county of arrest if the defendant is arrested outside the county where the warrant was issued;

(2) Bond for Felony Warrants. If the defendant is eligible for release at the initial appearance, the issuing magistrate may include on the felony warrant a recommended deposit, cash, unsecured, or secured appearance bond and a recommended bond amount. However, when the warrant is issued for a felony offense, the defendant must not be released on bond without having an initial appearance before a magistrate.

(53) Bond for Misdemeanor Warrants. If the offense for which the warrant is issued is a misdemeanor, the warrant may state the amount of an deposit, cash, unsecured, or secured appearance bond, if the defendant is bailable as a matter of right.

(b) Summons. [No change]

Rule 4.1. Procedure upon Arrest

(a) Prompt ~~Initial~~ Appearance Before a Magistrate. An arrested person must be promptly taken before a magistrate for an initial appearance. At the initial appearance, the magistrate will advise the arrested person of those matters set forth in Rule 4.2. If the initial appearance does not occur within 24 hours after arrest, the arrested person must be immediately released from custody. If a misdemeanor warrant states the amount of a deposit, cash, unsecured, or secured appearance bond, as provided in Rule 3.2(a)(3), and the arrested person has posted the bond prior to the initial appearance, the arrested person must be promptly released from custody.

(b) through (e). [No change]

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Rule 3.2. Content of a Warrant or Summons

(a) Warrant.

(1) *Mandatory Provisions.* A warrant must:

(A) be signed with an electronic or other signature by the issuing magistrate or by a deputy clerk of the superior court;

(B) contain the defendant's name or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty;

(C) state the charged offense and whether the offense is one to which victims' rights provisions apply; and

(D) command that the defendant be arrested and brought before the issuing magistrate or, if the issuing magistrate is absent or unable to act, the nearest or most accessible magistrate in the same county or in the county of arrest if the defendant is arrested outside the county where the warrant was issued.

(2) *Bond for Felony Warrants.* If the defendant is eligible for release at the initial appearance, the issuing magistrate may include on the felony warrant a recommended deposit, cash, unsecured, or secured appearance bond and a recommended bond amount. However, when the warrant is issued for a felony offense, the defendant must not be released on bond without having an initial appearance before a magistrate.

(3) *Bond for Misdemeanor Warrants.* If the offense for which the warrant is issued is a misdemeanor, the warrant may state the amount of a deposit, cash, unsecured, or secured appearance bond.

(b) Summons. [No change]

Rule 4.1. Procedure upon Arrest

(a) Prompt Appearance Before a Magistrate. An arrested person must be promptly taken before a magistrate for an initial appearance. At the initial appearance, the magistrate will advise the arrested person of those matters set forth in Rule 4.2. If the initial appearance does not occur within 24 hours after arrest, the arrested person must be immediately released from custody. If a misdemeanor warrant states the amount of a deposit, cash, unsecured, or secured appearance bond, as provided in Rule 3.2(a)(3), and the arrested person has posted the bond prior to the initial appearance, the arrested person must be promptly released from custody.

(b) through (e). [No change]

Form 2(a): Felony Arrest Warrant

COURT

County, Arizona

STATE OF ARIZONA, Plaintiff -vs Defendant(s) (First, MI, Last) Address: _____	ARREST WARRANT CASE NO. <input type="checkbox"/> DV [check if applicable] Fingerprint instruction upon arrest: <input type="checkbox"/> 01 criminal history [check if required]	For Court Use
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TO: ANY AUTHORIZED LAW ENFORCEMENT OFFICER

YOU ARE COMMANDED to arrest and bring the defendant before this court. If this court is unavailable, you must take the defendant to the nearest or most accessible magistrate in this county. If the arrest is made in another county, you must take the defendant before the nearest or most accessible magistrate in that county.

The defendant is accused of an offense or violation based on the following (examples: initial arrest warrant, failure to appear in court, probation violation): _____

This offense or violation is described as follows:

Offense Date	Statute/Rule & Literal Description	Class
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The defendant must NOT be released on bond without having an initial appearance before a magistrate.

If the defendant is eligible for release at the initial appearance, the recommended amount for a

[☐ secured appearance] [☐ unsecured appearance] [☐ deposit] or [☐ cash] bond is \$_____

- ☐ Explanation regarding the recommended amount: _____
- ☐ There is no recommendation.

- ☐ The defendant is not eligible for release on bond. [Explain / add additional orders of the court]
- ☐ Yes ☐ No ☐ Unknown The offense is, or is materially related to, a victims' rights applicable offense.

BY ORDER OF: The Honorable _____, Judge of _____ Court. [If signed by Superior Court Deputy Clerk]

Date

Printed name of the Judge or Deputy Clerk of the Superior Court:

SEX:	RACE:	DOB:	HGT:	WGT:	EYES:	HAIR:
ADDRESS: [TYPE:]						
COURT ORI:		WARRANT #: *		LE AGENCY: [Arresting Agency]		
CITATION #: *		EXTRADITION: *		PURGE DATE: *		
DL#: *		STATE: *		SSN (LAST 4)		
VIN:	YEAR:	MAKE:	MODEL:	STYLE:		
DR #: *						

[*optional information can vary by court and may include the last four digits of the defendant's SSN]

CERTIFICATE OF EXECUTION

I certify that the defendant was arrested at _____ a.m./p.m. on _____, 20____,
(month) (day) (year)

and presented defendant before Judge _____ at _____.

Date _____

Agency

Deputy Sheriff / Officer

Badge #

County, Arizona

STATE OF ARIZONA, Plaintiff -vs Defendant(s) (First, MI, Last) Address: _____	ARREST WARRANT CASE NO. <input type="checkbox"/> DV [check if applicable] Fingerprint instruction upon arrest: <input type="checkbox"/> 01 criminal history [check if required]	For Court Use
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TO: ANY AUTHORIZED LAW ENFORCEMENT OFFICER

YOU ARE COMMANDED to arrest and bring the defendant before this court. If this court is unavailable, you must take the defendant to the nearest or most accessible magistrate in this county. If the arrest is made in another county, you must take the defendant before the nearest or most accessible magistrate in that county.

The defendant is accused of an offense or violation based on the following: (examples: initial arrest warrant, failure to appear in court, probation violation): _____

This offense or violation is described as follows:

Offense Date	Statute/Rule & Literal Description	Class
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☐ Yes ☐ No The defendant may be released without having an initial appearance before a magistrate upon the posting of a [☐ *secured appearance*] [☐ *unsecured appearance*] [☐ *deposit*] or [☐ *cash*] bond in the amount of \$_____.

☐ Yes ☐ No ☐ Unknown The offense is, or is materially related to, a victims' rights applicable offense.

BY ORDER OF: *The Honorable* _____, Judge of _____ Court. *[If signed by Superior Court Deputy Clerk]*

Date _____ **Printed name of the Judge or Deputy Clerk of the Superior Court:** _____

SEX:	RACE:	DOB:	HGT:	WGT:	EYES:	HAIR:
ADDRESS: [TYPE:]						
COURT ORI:		WARRANT #: *		LE AGENCY: [Arresting Agency]		
CITATION #: *		EXTRADITION: *		PURGE DATE: *		
DL#: *		STATE: *		SSN (LAST 4)		
VIN:		YEAR:	MAKE:	MODEL:		STYLE:
DR #: *						

[*optional information can vary by court and may include the last four digits of the defendant's SSN]

CERTIFICATE OF EXECUTION

I certify that the defendant was arrested at _____ a.m./p.m. on _____, 20____,
(month) (day) (year)
and presented defendant before Judge _____ at _____.

Date _____

Agency

Deputy Sheriff / Officer

Badge #